

Senate Bill No. 830

Passed the Senate August 27, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 653w of the Penal Code, relating to intellectual property.

LEGISLATIVE COUNSEL'S DIGEST

SB 830, Wright. Recording crimes.

Existing law provides that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she advertises, sells, rents, manufactures, or possesses for those purposes, a recording or audiovisual work that does not disclose the name of the manufacturer, author, artist, performer, or producer, as specified. Failure to disclose the origin of a recording or audiovisual work is punishable by imprisonment in a county jail, imprisonment in the state prison, or a fine, or by both imprisonment and fine, as specified, depending on the number of articles of audio recordings or audiovisual works involved, and whether the offense is a first offense or a 2nd or subsequent offense. Existing law defines “recording” for the purpose of these provisions to mean any tangible medium upon which information or sounds are recorded or otherwise stored, including any phonograph record, disc, tape, audio cassette, wire, film, or other medium on which information or sounds are recorded or stored, but does not include sounds accompanying a motion picture or other visual work. Existing law defines “audiovisual works” as the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects such as films or tapes on which the works are embodied.

This bill would expand the definition of “recording” for the purposes of the above provisions to expressly include, but not be limited to, a memory card, flash drive, hard drive, or data storage device. This bill would, for purposes of the definition of “audiovisual works,” add discs, memory cards, flash drives, hard drives, or data storage devices, or other devices to films and tapes as examples of material objects on which the works may be

embodied. By expanding the scope of an existing crime, this bill would mandate a state-mandated local program.

This bill would incorporate changes to Section 653w of the Penal Code proposed by AB 819, contingent on the prior enactment of that bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 653w of the Penal Code is amended to read:

653w. (a) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

As used in this section, “recording” means any tangible medium upon which information or sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work.

As used in this section, “audiovisual works” are the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the

material objects, such as films, tapes, discs, memory cards, flash drives, hard drives, data storage device, or other devices, on which the works are embodied.

(b) Any person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertisement, offer for sale or resale, sale, rental, manufacture, or possession for these purposes, of at least 100 articles of audio recordings or 100 articles of audiovisual works described in subdivision (a), the person shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both.

(3) A second or subsequent conviction under subdivision (a) not described in paragraph (1), shall be punished by imprisonment in a county jail not to exceed one year or in the state prison, or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

SEC. 1.5. Section 653w of the Penal Code is amended to read:

653w. (a) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

As used in this section, “recording” means any tangible medium upon which information or sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or

sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work.

As used in this section, “audiovisual works” are the physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films, tapes, discs, memory cards, flash drives, hard drives, data storage devices, or other devices, on which the works are embodied.

(b) Any person who has been convicted of a violation of subdivision (a) shall be punished as follows:

(1) If the offense involves the advertisement, offer for sale or resale, sale, rental, manufacture, or possession for these purposes, of at least 100 articles of audio recordings or 100 articles of audiovisual works described in subdivision (a), the person shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed five hundred thousand dollars (\$500,000), or by both.

(2) Any other violation of subdivision (a) not described in paragraph (1), shall, upon a first offense, be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both.

(3) A second or subsequent conviction under subdivision (a) not described in paragraph (1), shall be punished by imprisonment in a county jail not to exceed one year or in the state prison, or by a fine not to exceed two hundred thousand dollars (\$200,000), or by both.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 653w of the Penal Code proposed by this bill and AB 819. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 653w of the Penal Code, and (3) this bill is enacted after AB 819, in which case Section 653w of the Penal Code, as amended by AB 819, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor